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Woodworth, Leo Day

System for real estate brokers

[New York]

[1916]

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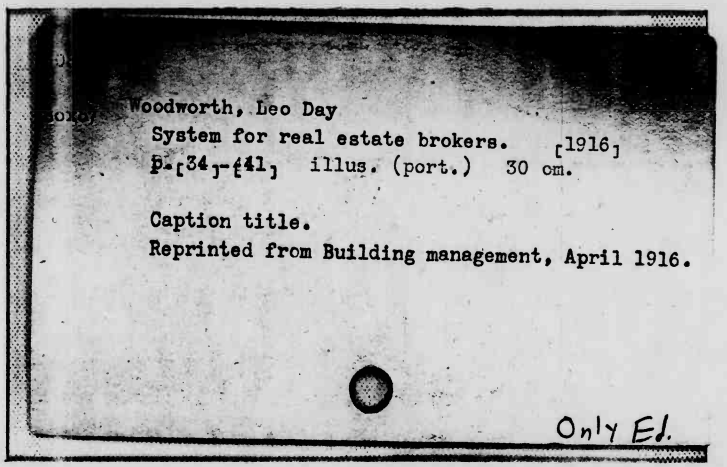
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System for Real Estate Brokers

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By

Leo Day Woodworth,

New York City

This, the first comprehensive treatise on brokerage forms and system, is a source of encouragement for success in the enlarged field now to be covered by BUILDING MANAGEMENT. It is especially fortunate that work has been undertaken by a broker of unusually broad and varied experience, whose collegiate and legal training have led him to take special interest in many neglected phases of his chosen profession. His success in the application of his brokerage ideas is attested by the constant demand for his service in the local, state and national organizations of brokers.

Mr. Woodworth is now Vice-president of the M. Morgenthau, Jr., Company of New York City, President of the Real Estate Association of the State of New York (the oldest, largest and most active state organization) and is Chairman of the Committee on State Legislation of the National Association of Real Estate Exchanges. Among Mr. Woodworth's more notable articles on technical subjects are "Exclusive and Multiple Listings and Their Advantages," "Instruction in Real Estate," which is the only report on educational work for this profession; "Listing Blanks," wherein the principles of a complete listing contract are stated; "Pigeonhole Methods in Real Estate," which condemns habits and methods detrimental to the interests of both broker and client, and finally his widely quoted "Real Estate Advertising," which was presented last July as his report as chairman of the special committee on advertising of the National Association of Real Estate Exchanges.

PART I—LISTING

"LISTING" may be defined as the authorization of a broker to procure a customer for a specific interest in real property.

Therefore, we can establish the following definition as reasonably accurate for our present purposes:

"BROKER" comprises any person who is employed to procure a customer for a specific interest in realty. A broker, as such, cannot exercise discretionary powers for his principal and, therefore, does not enjoy the powers of an agent, except as same are explicitly stated.

"CLIENT" denotes the broker's principal or person who lists the property, thereby placing the broker in a fiduciary capacity.

"PATRON" is the prospective customer who patronizes the broker. There is no fiduciary obligation between broker and patron, but business and professional ethics have created a moral obligation of honesty and fairness which is as binding.

The object of a brokerage listing being the procurement of a customer by the broker for the client's property, the broker completes his professional duty and is entitled to his remuneration at that time. His professional service involves nothing more. He goes beyond his proper sphere and offers service for which he is not equipped when he assumes the duties and responsibilities of a conveyancer, vouches for the quality or condition of the title, or otherwise permits his brokerage to depend upon property rights or client's interest being other than as represented either directly or by implication in the listing.

The value or merit of a listing has little or no relation to its abuse by dealers or speculators, who may sometimes adopt it as a means for obtaining special advantage for themselves rather than fulfillment of the fiduciary obligation mentioned above. The client must be presumed to have chosen his broker because of sufficient proof of the integrity and ability which warrant the personal relationship.

It must be assumed in every case that a broker is employed because of his special ability to render service in procuring a customer—in making possible a meeting of minds which will result in the transfer of certain interest in real estate. Therefore, it must also be assumed that the client considers those services necessary, or at least desirable and worth the compensation

which is agreed upon as reasonable if the service is completed.

Brokers cannot adopt a better or more profitable rule than that *property well listed is half sold.*

The importance of the fact and form of the listing agreement is too generally underestimated. It reaches to all the future acts of the broker, the owner-client and the customer-patron.

An imperfect or faulty understanding between any of these parties is fatal. While temporary money profit may be derived therefrom by a trickster, it can lead to nothing but loss to the professional broker.

Assuming that the broker and his client are both acting in absolute good faith, motives and opinions are numerous as persons. Memory is the weakest of all human faculties; therefore, no mere verbal agreement

Date.....191..

I hereby employ.....of.....
as sole agent to sell the within described property.

In consideration of said agent listing, advertising, placing sign upon or making special effort to sell same, upon sale to a purchaser procured through their efforts under this listing, or upon sale by me or any person or agency while this listing is in effect, I agree to pay said agent a commission of 5 per cent (minimum $100) of sale price.

I will furnish warranty deed and tax and title searches showing a marketable title, free of all liens and incumbrances except as herein stated.

I agree that said property shall not be offered for sale at a less price or on more liberal terms, without first giving said agent an opportunity to do likewise.

I reserve the right to revoke this agency upon thirty days' written notice after one year from the date hereof.

This listing is made in duplicate, of which I have received my copy, and states the entire agreement.

Witness:.....
Witness:.....
Owner .....L. S.
By Agent .....L. S.
Address .....

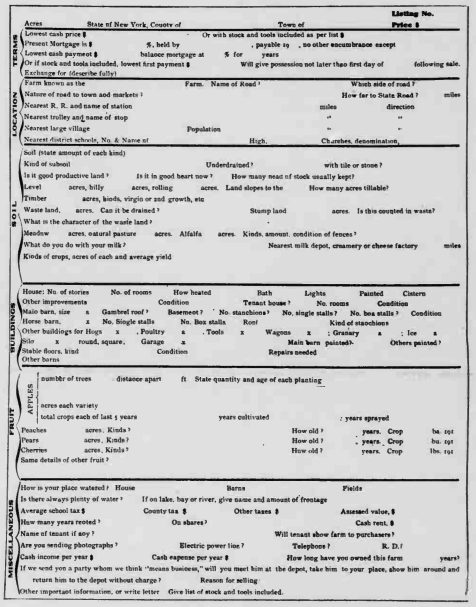
Form No. 1, of which a complete analysis is given from a legal standpoint

ever can replace the definiteness of some form of memorandum. The advantages or necessity of permanent record of contract seems to have been recognized for realty, while rights to personalty were still determined by physical possession.

The well-known fact that so many brokers fail to recognize the same principles when fixing their relations with clients, may be referred in the last analysis to lack of appreciation of professional needs and standards. The general use of standard forms of listings will, and can, only result from a consistent demand therefore by brokers, although owners quickly learn their advantages, and will, therefore, regard as a "curber" any broker who does not expect, as a matter of course, that a listing shall be in writing.

The broker risks his capital of time and money, and bases his hope of income and future competence, upon his chances for performing the service desired by his client. This client takes no such chance, as he goes about his accustomed work while the broker may be risking his chance for earning bread and butter, and a return of his capital, upon business conditions and the salability of the client's property right.

We, therefore, must appreciate the absolute necessity of a fair listing. The broker must be fair to himself by accepting only such listing as contains an element of profit upon the amount of expert and money service, which he must expect to invest. The client must be fair to himself by employing his broker under such conditions as will make it possible for the broker to render the amount and quality of service which his proposition may require. These selfish needs for fairness are in addition to the acknowledged need for fairness between client and the broker.


Listing No.
Acres State of New York, County of Town of Price $
TERMS
Lowest cash price $ Or with stock and tools included as per list $
Present Mortgage to $ $, held by , payable in , no other encumbrance except
Lowest cash payment $ balance mortgage at % for years
Or if stock and tools included, lowest first payment $ Will give possession not later than first day of following sale.
Exchange for (describe fully)
LOCATION
Farm known as the Farm. Name of Road ? Which side of road ?
Nature of road to town and markets ? How far to State Road ? miles
Nearest R. R. and name of station miles direction
Nearest trolley and name of stop " "
Nearest large village Population " "
Nearest district schools, No. & Name of High Churches, denomination
SOIL
Soil (state amount of each kind)
Kind of subsoil Underdrained ? with tile or stone ?
Is it good productive land ? Is it in good heart now ? How many head of stock usually kept?
Level acres, hilly acres, rolling acres. Land slopes to the How many acres tillable?
Timber acres, kinds, virgin or 2nd growth, etc
Waste land, acres. Can it be drained ? Stump land acres. Is this counted in waste?
What is the character of the waste land ?
Meadow acres, natural pasture acres. Alfalfa acres. Kinds, amount, condition of fences ?
What do you do with your milk ? Nearest milk depot, creamery or cheese factory miles
Kinds of crops, acres of each and average yield
BUILDINGS
House: No. of stories No. of rooms How heated Bath Lights Painted Cistern
Other improvements Condition Tenant house ? No. rooms Condition
Main barn, size x Gambrel roof ? Basement ? No. stanchions ? No. single stalls ? No. box stalls ? Condition
Horse barn, x No. Single stalls No. Box stalls Roof Kind of stanchions
Other buildings for Hogs x , Poultry x , Tools x Wagons x ; Granary x ; Ice x
Silo x round, square, Garage x Main barn painted? Others painted?
Stable floors, kind Condition Repairs needed
Other barns
FRUIT ARTICLES
number of trees distance apart ft State quantity and age of each planting
acres each variety
total crops each of last 5 years years cultivated ; years sprayed
Peaches acres. Kinds ? How old ? years. Crop bu. 19
Pears acres. Kinds ? How old ? years. Crop bu. 19
Cherries acres. Kinds ? How old ? years. Crop lbs. 19
Same details of other fruit ?
MISCELLANEOUS
How is your place watered ? House Barns Fields
Is there always plenty of water ? If on lake, bay or river, give name and amount of frontage
Average school tax $ County tax $ Other taxes $ Assessed value, $
How many years rented ? On shares ? Cash rent, $
Name of tenant if any ? Will tenant show farm to purchasers ?
Are you sending photographs ? Electric power line ? Telephone ? R. D.?
Cash income per year $ Cash expense per year $ How long have you owned this farm years?
If we send you a party whom we think "means business," will you meet him at the depot, take him to your place, show him around and return him to the depot without charge ? Reason for selling
Other important information, or write letter Give list of stock and tools included.

Reverse side of Form No. 1. Showing complete description of property.

The time may be expected when the broker will be a subject of censure unless he can assure his client in advance of the success of his service, the usual business hazards expected.

In proportion to the increase of this professional responsibility, it is certain that there will be a tightening of the bonds between broker and client, which will be neglected in the form and content of the listing agreement.

This idea of the connection between the element of chance and the form of listing, was the theme of the writer's suggestion some years ago that the normal development of a broker would be found to be in four stages: (1) the novitiate, with no listing other than the owner's admonition to "bring me a buyer"; (2) the beginner with an office, but without the realization of the

DETROIT REAL ESTATE BOARD UNIFORM CONTRACT

MEMBER D. R. E. B.

In Consideration of Your Agreement to list this property on the Detroit Real Estate Board, in addition to the personal efforts of your office to find a purchaser, I hereby give you the exclusive sale for a period of_____from this date of_____ otherwise known as No._____at the price of_____ payable_____down, and the balance on or before_____ with_____payments of $_____or more_____ (with or including) interest at_____per cent. per annum payable_____: or upon any other price, terms or exchange to which I consent.

If said property is sold before the expiration of your exclusive sale, or if it should be sold within six months from such expiration to anyone with whom you have had negotiations and whose name you give me at the time of such expiration, I agree to pay you a commission of_____ per cent. of the selling price. Authority is hereby given you to place a "For Sale" sign upon the property and to remove all other "For Sale" signs. In the event of such sale I agree to furnish a Burton or Union Trust Company or_____abstract certified to date, showing a good and merchantable title, and to execute and deliver to the purchaser a good and sufficient conveyance of title, free and clear of all liens and encumbrances, excepting building restrictions, if any, and_____

Dated_____ Signed_____

Form No. 2 adopted by the Detroit Real Estate Board.

need for demanding the use of the written listings with which he is provided; (3) the broker who requires written listings, and finally, (4) the broker who searches for the desirable listing, and then obtains the quality of listing which will support the campaign that his experience will enable him to conduct successfully. Note how such a business development is controlled by the necessity for limiting the element of chance.

FORM OF BLANK

Blanks are found printed on all sizes, shapes, colors and quality of paper and card, and in size they vary from the 3x5 card to the four-page folder of letter or legalcap size.

The form of the blank should be considered very carefully as its arrangement and shape will have much to do with the favor with which it is regarded by clients. It should be attractive and businesslike, but of convenient dimensions for use in obtaining listings and for filing.

It is not good business to use the original listing agreement and description in the daily office work, as it might be lost, destroyed or mutilated, and memoranda subsequently inserted would render the original contract null and void.

Every client should have a copy of the listing, and it is very desirable that this copy be made by carbon, thus showing a facsimile of the document which is left in the hands of the broker.

Standardization of forms both as to the wording of the contract and the appearance of the blank, is most desirable. This is especially true where brokers in their effort to obtain listing agreements of special strength are using the argument of co-operation by associated brokers. Many owners will attempt to dictate to more than one member of this chain of brokers, and if he is met with the same line of talk and presented with the same form of contract in each office, he will soon be convinced of the necessity of transacting his business in accordance with methods which have been developed at large cost of time and money by the real estate broker.

Standardization is the result of much give and take

The Toledo Real Estate Board
UNIFORM SALE AGENCY CONTRACT

M.....
Member The Toledo Real Estate Board.

In consideration of your agreement to list the property with THE TOLEDO REAL ESTATE BOARD, and to use your efforts to find a purchaser, I hereby grant you the exclusive right for six months from date hereof, and thereafter until you receive from me a written notice terminating this agreement, to sell.....

.....

..... for the sum of $.....

payable .....

or upon any other price, terms or exchange to which I consent.

If said property is sold before the expiration of this agreement, or if it be sold within three months after such expiration to any person with whom you have had negotiations, I agree to pay you THE TOLEDO REAL ESTATE BOARD commission. In the event of such sale I will execute and deliver to said purchaser a deed for said property with full covenants of warranty and release of dower, except ..... I represent the title to said property to be good, and will furnish a merchantable abstract (opinion) of title to the same.

You are hereby authorized to place a "For Sale" sign on said property and to remove all other signs. .....

Dated at.....

.....

Accepted ..... 191.....

.....
Member The Toledo Real Estate Board.

Form No. 3, adopted by the Toledo Real Estate Board.

by brokers and after any considerable time spent in consultation and experiment, the acceptance of a given form by a large percentage of the association should be followed by acquiescence on the part of the brokers who are still unconvinced.

This advice seems reasonable as every listing blank is intended to accomplish but a few things, and should not be encumbered with details of minor importance in practice.

The listing agreement must be such as to assure completion of any deal in accordance with local custom.

Birmingham, Ala., ... 191..

To.....

For and in consideration of your listing and pushing the sale of the property described on reverse side of this sheet, you are authorized to act as my sole agent in selling the property for a sum of $.....on the following terms.

.....

.....

Will furnish abstract of title brought down to date, and convey property by warranty deed. I will pay taxes for current year, and insurance is to be pro-rated. The property is in fee simple, and to the best of my knowledge and belief, the title is good and merchantable. The title is in my name.

If sale is effected at said price and terms, or on any other price and terms that may be mutually agreed upon,.....agree to pay 5% commission up to $5,000 and 2½% on any sum in excess of $5,000; and also agree to render you every reasonable assistance in securing a purchaser, and to pay you said commission in event I sell direct to any purchaser, and also agree that said exclusive agency shall extend for.....days from this date, and thereafter until you are given.....days' written notice of withdrawal of this proposition.

Witness:

.....

UNIFORM SALES LISTING OF BIRMINGHAM REAL ESTATE EXCHANGE

THE EXCHANGE URGES THE OWNER TO LIST HIS PROPERTY WITH ONE AGENT ONLY. DON'T GIVE IT TO 3 OR 4 DIFFERENT AGENTS AND EXPECT THEM TO TAKE MUCH INTEREST. No.....

LOCATION DATE

LOT No. BLK. No. ADD. OR SUB

SIZE OF LOT X WATER GAS SEWERS ALLEY PRICE

FACES SIDEWALK CURB AND GUTTER ST. PAVED WITH BLKS. TO CAR TERMS

No. Rooms	Bed Rooms	Living Room	Den or Lib'y	Kitchen	Papered-Up	Bath Rooms	Purches
				K. Cupboard	Papered-Down	D-Surs. Lav.	
Stories	Sleep. Porch	Dining Room	Conservatory	Butler Pir.	Oak Fl. Up	Tile Floors	Attic
	Back Stairs	B'ft's Room	Sun Parlor	Store-room	Oak Fl. Down	M'ble W'ck's	Screened
						Tile	

Material	Mantels	Servant Rooms	Electric Lights	Shingle Roof	Condition:	
When Painted	Garage	Toilet	Gas Lights	Composition Roof		Put Up Card
	Coal Room	Bath	Gas for Cook	Slate or Tile Roof	Built	List on Exchange
						Advertise in Paper

Grates	Occupied By	Rented for $	BUSINESS PROPERTY	
Hot Air		Will Rent for	Masterpl.	R. R. Trackage
Steam	Vacant Keys at	Lease Expires	No. Stories	Floor Space
Hot Water		Possession Given	Show Windows	
Cement Fl.			Elevators	

1st MORTGAGE $ DUE % INT. HELD BY

2nd MORTGAGE $ DUE % INT. HELD BY

ST. IMPROV. ASSESSMENTS TAXES INSURANCE

OWNER ADDRESS PHONE (Res.) (Office)

Form No. 4, adopted by the Birmingham Real Estate Exchange, which seems admirable for use in the care of city property

The object of a listing agreement being to effect a deal, the listing should constitute an irrevocable contract to complete the transaction exactly as contemplated at the time of listing. The broker should refuse to offer property that is likely to be withdrawn whenever a buyer becomes interested. To this end, it is important to obtain as parties to the listing, all persons who must sign the deed, lease or other final instrument after the customer is procured.

The listing must also specify the property and interest that the client can convey. Mortgages must be accurately described and possibility of renewal determined, as well as terms upon which a release can be obtained. Rights or restrictions on the use of premises, easements existing above, on or below the ground or in the highway, must be stated. In short, a purchaser must know whether the premises are to be conveyed "free of lien or encumbrance" or as to what limitations are on the title.

Price and possible terms of purchase are essentials that should be determined with greater precision than is customary. Too frequently these items are regarded as a subject for dickering between the client and patron. A large proportion of properties are offered at a price which is above the market value, and which is expected to be lowered when a buyer becomes interested. The contract should contain the lowest price that will be considered by the client, as a brokers' commission is earned when he obtains a buyer able and willing to purchase in accordance with the listing. This protects the brokers' compensation when really earned, against that large class of owners who think that a buyer will always raise his offer even though the buyer is ready to take the property at the listed price.

The agreement should also state what proof of title, if any, will be furnished by the client. It is well to state the kind of abstract that will be furnished, whether by county clerk or other specified abstractor.

The date upon which possession is to be given by

CARD | PLATE NO. | **SUBURBAN HOMES and IMPROVED FARMS** | COUNTY | STATE | AGENCY NO.

Description of Land

Sec. Twp. Range

Size of ground ..... Exterior (stone / brick / frame / cement)

Size of house .....

Fronts on lake ..... Rooms 1st 2nd 3rd Total

Carline or Ry. .....

Distance from .....

Get off at station .....

Well & cistern (yes / no)

Windmill & pump (yes / no)

Finish .....

Floors .....

Fireplace (yes / no)

Sideboard (yes / no)

Bath (yes / no)

Laundry (yes / no)

Heat .....

Artificial lights (yes / no) kind

Basement or cellar (yes / no)

Screens & storm sash (yes / no)

Screened porch (yes / no)

When built .....

Barn or garage (yes / no)

Other out buildings .....

Taxes .....

Fire insurance .....

Mtg. Amt ..... Rate ..... (yes / no)

Due .....

Rents .....

Occupant .....

Terms of sale .....

Price ..... gross

Remarks as to soil, land cultivated, fruit, stock, machinery, out buildings, etc.

Form No. 5-6 SECTION

Uniform Exclusive Sale Contract.

Minneapolis, Minn., ... 19..

To.....

Members of Minneapolis Real Estate Board.

In consideration of your agreement to list in your office the real estate described on the reverse side of this card, and of your efforts to find a purchaser for the same, I hereby grant to you the exclusive right to sell or to contract to sell said real estate, within a period of..... months from date hereof, and thereafter until you receive from me a ten days' written notice terminating this agreement, for the price and upon the terms stated on the reverse side of this card, and I hereby agree to furnish complete abstract of title to said real estate and to execute a deed of general warranty in due form of law, conveying a marketable title to the same, in which my wife or husband shall join, to such person as you shall have sold or agreed to sell the same, and for your services, I hereby agree to pay you the regular Minneapolis Real Estate Board commission on the purchase price thereof, as indicated by a schedule thereof, the receipt of which is hereby acknowledged, upon any sale or contract for the sale of said real estate made while this agreement remains in force, whether such sale be made by yourselves or by myself or whether at the price and upon the terms stated on the reverse side of this card, or at a different price or upon other terms accepted by me.

It is further agreed that upon any sale or contract for the sale of said real estate made by me within three months next after the termination of this agreement to any person with whom you have had negotiations for the sale of the same and of which I shall have been advised, I will pay you the full Board rate of commission, as above indicated.

You are hereby authorized to place one neat "for sale" sign on said real estate, and to remove all other signs therefrom.

Minneapolis Real Estate Board Schedule of Commissions

On sales of $5,000 or under, 5 per cent
On sales over $5,000, 5 per cent, on the first $5,000 and 2½ on the balance
Sales from $700 to $500 $25.00.
No commission less than $15.00

Signed .....

Accepted.

.....

Owner

Members Minneapolis Real Estate Board.

Form C3 Tel..... Address.....

Form No. 5, which is very complete and well phrased.

client to buyer must be specified, if it does not coincide with the date of transfer.

Specific performance and damages being the remedies in equity and at law for a breach of contract between client and patron, the listing agreement should contain all information necessary to maintain a suit or action on the contract of sale. The broker should not be compelled to go to the owner for information essential to an enforceable contract, after a buyer has been procured for the property.

Listings will not be obtained by any reputable broker for the purpose of tempting or compelling the client to pay a withdrawal fee, as cancellation is not the object of the listing.

Contracts drawn for an indefinite period or in perpetuity are of doubtful validity and certainly inequitable, and provisions for automatic renewal must be fair and reasonable as to the client.

The rate of commission should be clearly defined, and will usually be the rate established by the real estate organization of the locality. The term "commission" does not include listing or advertising fees. It is well known that some pseudo-brokers are defrauding the public of large sums by insisting on a filing fee or fee to cover special bulletin or other publicity which is worthless. Such persons usually offer to accept a commission somewhat less than the established rate, this being the inducement to the owner to pay a small advance fee. This rule will not exclude the placing of a special advertising fund in the hands of an established broker, as is frequently done for property not in general demand.

Brokers should not accept listings at a rate of commission which will not support efficient service. The client has a right to expect his broker to use every reasonable means to procure a buyer. The cost of fulfilling his task will vary according to the property to be sold and to the conditions of the real estate market. It is not expedient to permit the rate for any special class of property to fluctuate from year to year, but the established rate should allow a reasonable profit in the average year.

The amount of the brokers' commission should be determined by the actual purchase price. Without considering the ethics of the handling of optioned properties by brokers, it is plainly inconsistent for the confidential agent of an owner to be withholding information concerning the salability of the listed property. The client employs the broker because the broker is able to render services which are valuable because of a quicker or more advantageous deal than the owner could effect. On the other hand, the prospective buyer has a right to understand that he is buying at the owner's price, without other compensation to the broker than the customary commission. No listing should contain a clause providing for special or additional compensation based upon the ability of the broker to depreciate the owner's price and increase the patron's offer.

Inspections should be facilitated by the owner. In the case of country property, this will sometimes involve meeting and returning the prospective buyer and incidental entertainment. Brokers will always insist on conducting the inspections by prospective buyers, when circumstances permit.

The client must use every effort to assist his broker in procuring the buyer, especially if the broker has been made the sole agent for the sale of the property.

Moral obligations of both broker and client are

THE CLEVELAND REAL ESTATE BOARD
UNIFORM AGENCY CONTRACT

.....
Member The Cleveland Real Estate Board.

In consideration of your endeavor to procure a Lessee —Purchaser—Tenant for the property described hereon and registration of the same with the CLEVELAND REAL ESTATE BOARD, the undersigned *grants you the sole and exclusive right for a period of six months, and thereafter until thirty days notice in writing has been given to terminate the same,* to Lease—Sell—Rent said property at the price and upon the terms stated hereon, or, at any other price or terms to which the undersigned may consent. The undersigned further agrees to assist and co-operate in such sale. The undersigned hereby agrees to pay you commission in accordance with THE CLEVELAND REAL ESTATE BOARD rates printed hereon in case said property or any portion thereof is Leased—Sold—Rented by you or any person during the term of this contract or within three months after its expiration through your instrumentality or that of any board member. Exclusive privilege is granted to place your sign on the property.

Dated.....191..
Accepted.....
.....Owner

....
(Subject) (Price) (Location)
DESCRIPTION:

BOARD RATES OF COMMISSION ON SALES OF REAL ESTATE

On a sale of $1,200 or less, 5% minimum commission	$25
Over $1,000 and including $2,000	60
Over $2,000 and including $3,000	80
Over $3,000 and including $5,000	100
All sales exceeding $5,000	2%
Farms and Suburban Property	5%

Vacant City Property 5% on first $5,000, 2% on excess over $5,000.
Minimum charge on any deal, $25.

Form No. 6, adopted by the Cleveland Real Estate Board. The convenience of this blank is at once palpable.

numerous and frequently complicated. Any attempt to include them in the listing agreement will be found to encumber the blank with many things that are of doubtful legal effect, and their mere presence would make the client undüly suspicious. Both broker and client should work in closest harmony and each is entitled to all the information obtained by the other that will assist in any way to effect a sale. If the broker's listing form indicates suspicion toward his clients, the latter will be privileged to have the same amount of suspicion toward him. The net result will be a lowering of efficiency and disinterest on the part of both broker and client.

In the application of the above principles, some modifications must be made to suit the needs of special localities. The intelligence of clients and the kind of property to be sold must also be considered when drafting an adequate form. Thus, a listing for city property should be made very brief because many technicalities are covered by local usage and make it unwise to cumber a form with the rules usually enforced. In the case of country property, broker and client are less acquainted and sales in any locality are so infrequent that the requirements from buyers and sellers are regarded more strictly.

Whether the listing form be long or short, it should be simple in wording and readily understood. The legal essentials are definiteness as to the persons, property and service to be performed. Being for service, the form need not state a money consideration nor the fact of acceptance.

In the forms which we here present, it will be noted that the number of blanks to be filled in presence of the client, is made as small as possible. The ideal form requires only the client's signature to complete the contract, the other essentials being stated along with details of exact location, improvements, conditions, income, taxes, etc., which in practice are usually noted from the owner's statement, although to be carefully checked upon the inspection trip.

Several of the forms which we reproduce, have been adopted in connection with exchange or multiple listing systems, and show the result of close study in committee and open meeting. Of course, such blanks are just as available for individual use, the reference to the exchange being omitted.

The description forms to accompany these contracts will be reproduced in the next article in this series.

Careful analyses of hundreds of listing blanks and debates in open meeting on several occasions, seem to warrant us in presenting form No. 1, page —, as a complete listing blank, it being assumed that the essentials of description, encumbrance, price and terms of sale are clearly stated in the informal description on the reverse of the sheet.

ANALYSIS OF FORM NO. 1

The first paragraph identifies the broker and indicates that he is to serve a specified employer. A frequent variation is to the effect that the broker is to "assist" the owner, and we advise that the broker obtain an understanding that the client must do everything possible to co-operate with the broker in effecting a sale. We avoid the word "exclusive," although the legal effect is substantially the same—as a matter of fact, the broker who becomes a sole agent does not care how many listings are made with other brokers as he is to receive his commission no matter who makes the sale. The word "agent" is somewhat broader than broker, and includes all the latter's powers. This paragraph refers to all the facts mentioned in the description blank, and stating price or terms would be mere duplication. A blank which provides that the employment is to sell "at not less than $——," is objectionable in that it places a minimum below which the broker can not claim a commission, and such a clause is contrary to the fundamental principle that a broker should be paid a commission on any price agreed to by his client. The word "my" is intended to guarantee the client's right to list, but in practice the word seems to be of no importance.

A broker's authority to "sell" has been held to authorize him to sign the client's name to a contract of sale. Pringle v. Spaulding, 53 Barb. N. Y. 17, 21. Special clauses authorizing such acts of agency are, therefore, unnecessary. Such acceptance on behalf of the client must not exceed the strict terms of the listing and the broker cannot agree to provisions for liquidated damages or other penalty.

Authority to sell will also doubtless include authority to receipt for a deposit on account of purchase price. The deposit need not be paid over without deduction of commission, as the commission becomes due under this contract when the buyer is procured, and the owner accepts the buyer when he accepts any part of the price.

The second paragraph indicates the value of a sole agency agreement. It enables a broker to show his goods to the world with assurance that he will receive reward even though it may be difficult to prove that the sale resulted from his efforts. It also assures the broker of the full benefit of the common law rule, that a broker authorized to procure a customer is entitled to his commission whenever such procurement is accomplished, even though the listing agreement had been terminated in the meantime.

The word "procure" should always be used as its meaning is well established in law, and assures every reasonable protection to the broker's rights. A buyer is procured and a broker's commission is earned when the broker finds a person able, ready and willing to buy, and the claim cannot be denied after owner agrees to sell to such person. Words such as "secure" are sometimes used, but their legal effect is doubtful, lead to controversy and add nothing to the income of the broker.

The authority to place a sign upon the property is of great importance to the broker, and it is included in the contract that the privilege may be granted in a larger proportion of cases. It is intended to be erased if not wanted.

It is sometimes attempted to have this same consideration support a further agreement to sell "said premises" to the broker "at any time while this contract is in force, upon such terms and conditions, in the same manner as to a purchaser procured by him." The practical value of such a clause is doubtful and it will result in losing more commissions through prohibition of sale by owner than could be expected to accrue through purchase of a bargain as it would be unsafe for the owner to effect any sale except through the broker.

I hereby employ the..... Real Estate Company of .....N. Y., my sole agent to sell the within described property, and in consideration of their listing, advertising or making special effort to sell same, I agree to pay 2½ per cent. (Minimum, $25.00) commission in case of sale by us or any other persons before ....., or if a sale after said date is effected through their efforts.

Dated at....., ... 191... Phone....
Owner ..... Address.....St.
Ent'd..... Withdrawn..... Sold..... by.....

		Phones			
WARD	PLATE	Bell House	Double Two Flat	DATE	191
NAME			ADDRESS		
Location of Property			Asking Price / Lowest Price	Terms: Smallest Payment down	
Amount of Mortgage		Who holds Mortgage		When due	
Is Mortgage 5 or 6 per cent		Will take 1st Mortgage / Will take 2nd Mortgage	What Amount / What Amount	What is the Assessed Valuation	
What was the last City Tax		Water Meter Yes No	Brick or Frame House	How many Rooms	
Attic		Has House Square Reception Hall	Do you count Hall as Room	How many 1st Floor	
Room in Attic			Open Plumbing	How many 2nd Floor	
Hot and Cold Water		Bath, Porcelain or Zinc	Any Hardwood Floors	How many Bed-Rooms	
Lavatory in House				Inside Toilet	
Laundry		How is House Heated	Oak Georgia Pine	In what rooms	
What is interior wood finish		Gas or Electricity	Mantel, Coal or Gas	Decorations: Good Fair	
Is House vacant		Key can be found at No	When was house painted	When was House Built	
Can we have a key				Cement Celler	
Gas Range Shades		When can we show house	When can purchaser have possession	What kind of Walks	
Coal Range				Street Improved	
What are the Rentals		Barn on Place	Size of Lot	What Pavement	
Will Exchange for		Brick or Frame	Any Fruit. State what kind and Number of each		

Form No. 7 seems to have reduced exclusive listing agreements to the last word of simplicity.

The third paragraph is a technical phrase which cannot be changed without endangering the rights of both client and patron. The courts have established the exact meaning of each word, and the clause is substantially the same as that usually found in land contracts.

Paragraph four protects the broker against an owner who fails to realize that a broker's services add nothing to the value of the property. Too frequently an owner fixes his net price and then authorizes his broker to accept a price which is the sum of the net price and the commission. Such arrangements are usually disastrous to the interests of all concerned. Brokerage services add nothing to the value of the premises, and only supply ability which is lacking in the owner. If the owner can and has time to sell the property without the assistance of another, every rule of economy teaches that he should effect a sale himself. After giving the property to his broker, it is to the interest of the owner to leave all negotiations to the broker, to refer all possible buyers to him, and usually to refuse to negotiate direct with any buyer. A penurious or dishonest owner will try to handle them in a way to avoid paying a commission, in spite of any provisions of contract. Therefore, a further provision that owner is to refer all inquiries to the broker, or to give him the names of all persons likely to be interested, is of questionable value as it seems to add nothing to the practical value of the contract.

Paragraph five, as here printed, will usually apply to country property only. One concern has been listing suburban property on a blank which provides for cancellation upon specified notice "after October 1, next." City property which is not listed for a year or more should be covered after the next selling season. This term should not be so short as to place the broker in the awkward position of having to confess that he overestimated his ability. Occasionally a property can be taken for a very short term, but on premises that must be advertised extensively, sufficient time must be allowed for a thorough campaign. The thirty-day withdrawal clause is adopted as a protection against dishonest owners, but it has the disadvantage of being forgotten by owners. A large majority of listings are signed without much thought, and owners are disposed to remember the date mentioned in the contract as the time of actual termination of the listing. As a matter of fact, although the writer here advises a thirty-day withdrawal clause in deference to a common preference among brokers, it is his personal advice that listings be made to expire on a date specified in the listing, without further notice of any kind. This seems to be the better practice under the doctrine that "the customer is always right," and nine out of ten times the client will honestly forget the

In consideration of services to be performed by you I hereby give you the exclusive right to sell the above property at the price of $..... on the terms given above, for..... from date, and in case a purchaser is found at the above price or any other price I may agree to accept, I agree to convey said property by good warranty deed to purchaser, furnishing a complete abstract of title brought down to date of transfer and pay you the regular cash commission as adopted by the Omaha Real Estate Exchange, as per schedule printed herewith.

Omaha .....191...
.....Owner.
Accepted and Agreed to.....
Address.....
Bus. Phone..... Res. Phone.....

Form No. 8, from the Omaha Real Estate Exchange; another splendid form.

necessity of notice of termination of listing, and his insistence too often will result in a dispute.

Paragraph six refers to the advantage of supplying an owner with an exact copy, preferably by carbon. The large majority of owners are not familiar with listing agreements, and their exact provisions are forgotten very quickly. Occasional cases have arisen wherein matters not covered by the listing have been discussed between the broker and client, with the result of seriously impairing the effect of the contract—hence the reference to the listing as being the "entire agreement."

A further provision that "this listing shall apply to and bind the heirs, successors and assigns of the respective parties" does not seem to be of practical value, owing to the personal nature of the employment. The broker cannot assign his interest without provision therefor. and even when he can make the assignment he cannot guarantee co-operation from the owner. Death of the client will continue in effect to cancel the listing in most cases, even though this further provision be adopted.

In the few cases where the listing is executed by an agent of the owner, the contract should be signed in the owner's name, followed by the agent's. Of course, such blanks will be dated and it is advisable to have the salesman subscribe as witness to the signature.

FORMS 2, 3, 4 AND 5

Forms Nos. 2 and 3, respectively, adopted by the Detroit and Toledo Real Estate Boards, show the disadvantage of many spaces being included in the listing contract, the original forms being of substantially the same size as these reproductions.

Form No. 4, being the form adopted by the Birmingham Real Estate Exchange, seems to be admirable for use in the case of city property, but it would seem that the blanks for price and terms should have been transferred to the description blank on the reverse of the sheet.

Form No. 5 is very complete and well phrased. It seems desirable to have such blanks printed so as to be easily read, rather than to have the forbidding aspect of this form from Minneapolis.

FORM NO. 6

The form of the Cleveland Real Estate Board (No. 6) seems to be an admirable attempt to have one blank which shall be available for all brokerage agreements. The convenience of such a blank is well known to every broker.

FORMS 7 AND 8

Form No. 7 seems to have reduced exclusive listing agreements to the last word of simplicity. This form was adopted by the Real Estate Association of Rochester some years ago, and its adequacy has been amply demonstrated.

Form No. 8, from the Omaha Real Estate Exchange, is another splendid short form, although our suggestion to relegate the price and terms to the description blank must here be repeated.

OTHER FORMS

There seems to be no exact agreement between any two cities as to what should be included in approved listing blanks. However, it is believed that forms other than those here presented will usually be found to embody similar principles.

In our next article we will refer to variations from these forms, and also to forms for non-exclusive listing. We will also reproduce and discuss a few typical description forms.

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END OF
TITLE